***THE HONOURABLE SRI JUSTICE B.PRAKASH RAO**

+ Writ Petition No.18070 of 2004

% Dated: 16-11-2004

Between:

#Toddy Tappers Cooperative Society Kawadiguda, Kawadiguda, Hyderabad, rep. By its President Mr.D.Narsimha Goud, S/o late Rajaram.

… Petitioner

and

$ 1.The Proh. & Excise Inspector, SHO, Musheerabad, Hyderabad.

2. The Proh. & Excise Superintendent Hyderabad District at Hyderabad.

3. The Commissioner of Proh. & Excise, Govt. of A.P., at Hyderabad.

4. The Govt. of A.P. Rep by its Secretary, Revenue (Excise-II) Department, Secretariat, Hyderabad.

… Respondents

! Counsel for petitioners: Mr. T.Amarnath Goud

^ Counsel for respondents: G.P. for Proh. & Excise

< GIST:

>HEAD NOTE:

?Cases referred:

1.1984 (1) APLJ 50 (S.N.)

2. AIR 1985 SC 1676

3. (2003) 5 S.C.C. 669

4. AIR 2002 SC 2968

5. (1995) 1 S.C.C. 574

6. 1990 (3) A.L.T. 179 (D.B.)

7. AIR 1972 S.C. 1863

8. 1984 (2) A.P.L.J. 44 (S.N.)

9. AIR 1978 S.C. 851

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SIXTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION Nos.18070of 2004, 18052 of 2004,

19088 of 2004, 20610 of 2004 and 18181 of 2004

1)WRIT PETITION NO : 18070 of 2004

Between:

Toddy Tappers Cooperative Society Kawadiguda, Kawadiguda, Hyderabad,
rep by its President Mr.D. Narsimha Goud, S/o. Late Rajaram

..... PETITIONER

AND

1 The Proh. & Excise Inspector, SHO, Musheerabad, Hyderabad.
2 The Proh. & Excise Superintendent Hyderabad District at Hyderabad.
3 The Commissioner of Proh. & Excise, Govt. of A.P. at Hyderabad.
4 The Govt. of A.P. Rep by its Secretary,
Revenue (Excise-II) Department, Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the action of the respondents in closing down the toddy shop of the petitioner society without issuing a notice or any order and preventing the petitioner society from conducting its business of tapping, transporting and selling of toddy as illegal, arbitrary, high handed, against principles of natural justice, and violative of Art.21 of constitution of India and further direct the respondents not to interfere with the lawfull business of tapping, transportation and sale of the toddy of the petitioner society.

Counsel for the Petitioner: MR.T.AMARNATH GOUD

Counsel for the Respondents : GP FOR PROH. & EXCISE

2) WRIT PETITION NO : 18052 of 2004

Between:

Toddy Tappers Cooperative Society Old Bhoiguda, Secunderabad, Hyderabad District, rep. by its President Mr.M.Yella Goud, S/o Nara Goud. ... Petitioner

AND

1 The Proh. & Excise Inspector, SHO, Secunderabad, Hyderabad
2 The Proh. & Excise Superintendent, Hyderabad District at Hyderabad
3 The Commissioner of Proh. & Excise, Govt.of A.P., at Hyderabad
4 The Govt.of A.P. rep.by its Secretary,
Revenue (Excise-II) Department, Secretariat, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus, or any other appropriate Writ, Order or direction, declaring the action of the respondents in closing down the toddy shop of the petitioner society without issuing a notice or any order and preventing the petitioner society from conducting its business of tapping, transporting and selling of toddy as illegal, arbitrary, high handed, against principles of natural justice, and violative of Art.21 of Constitution of India and further direct the respondents not to interfere with the lawful business of tapping, transportation and sale of the toddy of the petitioner society.

Counsel for the Petitioner: MR.T.AMARNATH GOUD

Counsel for the Respondents.: GP FOR PROHIBITION & EXCISE

3) WRIT PETITION NO : 19088 of 2004

Between:

1 Toddy Tappers Cooperative Society Humayunnagar, Humayunnagar, Hyderabad, rep by its President, Mr. Jaya Simha Goud, S/o. Yadaiah

2 Toddy Tappers Cooperative Society Asifnagar, Asifnagar, Hyderabad
rep by its President Mr. B. Narsing Goud, S/o. Rajalingam … Petitioners

AND

1 The Proh. & Excise Inspector, SHO, Golconda, Hyderabad.
2 The Proh. & Excise Superintendent, Hyderabad District at Hyderabad.
3 The Commissioner of Proh. & Excise, Govt. of A.P. at Hyderabad
4 The Govt. of A.P., rep by its Secretary
Revenue (Excise-II) Department, Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus, or any order appropriate writ, order or direction, declaring the action of the respondents in closing down the toddy shop of the petitioners societies without issuing a notice or any order and preventing the petitioners societies from conducting their business of tapping, transporting and selling of toddy as illegal, arbitrary, high handed, against principles of natural justice, and violative of Art.21 of Constitution of India and further direct the respondents not to interfere with the lawful business of tapping, transportation and sale of the toddy of the petitioners societies.

Counsel for the Petitioners: MR.T.AMARNATH GOUD

Counsel for the Respondents : GP FOR PROHIBITION & EXCISE

4)WRIT PETITION NO : 20610 of 2004

Between:

1 Toddy Tappers Cooperative Society, Addagutta, Hyderabad,
rep. by its President, Laxminarayana Goud.
2 Venu Gopal, S/o. Ramulu,
R/o. Hyderabad. … Petitioners

AND

1 State of A.P., rep. by its Spl. Chief Secretary,
Revenue (Excise-II) Department, Secretariat, Hyderabad.
2 The Commissioner of Prohibition & Excise, Govt of A.P. at Hyderabad.
3 The Proh. & Excise Superintendent, Hyderabad District at Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue an appropriate writ or order or direction one in the nature of writ of mandamus; i) declaring the impugned action of the respondents in not allowing the petitioners to continue their toddy business, as arbitrary, illegal, and violative of Art. 14,21, 38,39 and 46 of the Constitution of India; ii)direct the respondents to permit the petitioners

to continue their business notwithstanding distance rule as contained in Para-1 of Annexure to G.O.Ms.No.767 dt. 29.9.2004 of Respondent-1. iii) alternatively to declare Para-1 of Annexure to G.O.Ms.No.767 dt. 29.9.2004 of Respondent-1 as arbitrary, illegal and the same may be struck down; costs be awarded to the petitioners;.

Counsel for the Petitioners: MR.T.AMARNATH GOUD

Counsel for the Respondents : GP FOR PROHIBITION & EXCISE

5)WRIT PETITION NO : 18181 of 2004

Between:

Bandamaisammanagar Toddy Tappers Cooperative Society,
Lower Tank Bund, Hyderabad, Hyderabad district, rep. by its
President S. Sreeramulu Goud,

..... PETITIONER

AND

1 The Government of Andhra Pradesh, Prohibition & Excise Department, rep. by its Secretary, Secretariat, Hyderabad.
2 The Commissioner of Prohibition & Excise, Government of Andhra Pradesh, Hyderabad.
3 The Prohibition & Excise Superintendent, Hyderabad District at Nampally, Hyderabad.
4 The Prohibition & Excise Inspector, Musheerabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, or Order or direction more particularly one in the nature of "Writ of Mandamus" by declaring the action of the respondents in closing down the Toddy Shop of the Petitioner Society without issuing any notice or order and preventing the petitioner society from conducting its business of tapping, transporting and selling of toddy as illegal, arbitrary, violative of Principles of Natural Justice and also violative of Articles 14, 19(1)(g) and 21 of the Constitution of India besides against to the Excise (Toddy) Policy Guidelines issued in G.O.Ms.No.767 Revenue (Ex.II) Department dated 29-09-2004 and consequently direct the respondents not to interfere with the lawful business of tapping, transportation and sale of the toddy by the petitioner society.

Counsel for the Petitioner: MR.V.AJAYAKUMAR

Counsel for the Respondents : GP FOR PROHIBITION & EXCISE

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION Nos.18070of 2004, 18052 of 2004,

19088 of 2004, 20610 of 2004 and 18181 of 2004

COMMON ORDER:

Since common question is involved in all these Writ Petitions, they are being taken up together for disposal.

Heard Sri K.Ramakrishna Reddy and Sri D.Prakash Reddy, learned Senior Counsel appearing on behalf of the petitioners-societies, and the learned Advocate General on behalf of the respondents.

In all these Writ Petitions, the petitioners, who are toddy tappers co-operative societies, seek a Writ of Mandamus declaring action of the respondents in closing down toddy shops of their societies without issuance of notice or any order, and preventing them from conducting business of tapping, transporting and selling of toddy as illegal, arbitrary apart from opposed to principles of natural justice and violative of Article 21 of the Constitution of India.

The facts which are necessary for disposal of these Writ Petitions are that the petitioner societies were given licences in the year 2003 for varying periods, some restricting to the excise year 2003-2004 and some as a permanent basis, in terms of the Excise Policy at the relevant period especially as contained in G.O.Ms.No.998 Revenue (Excise-II) Department, dated 01.10.2003. In pursuance of the said

licences, the petitioners are carrying on their respective business, which caters to the needs of several members of the respective societies. It is the case of the petitioners that the policy to grant licence for such longer period is based upon socio-welfare measure and to ameliorate the conditions of the poor tappers. However, under the present policy issued for the year 2004-2005 in G.O.Ms.No.767 Revenue (Excise-II) Department, dated 29.09.2004, certain restrictions in regard to the toddy shops have been brought in, whereby such shops to be established only where the trees are available within a distance of 50 KMs from the periphery of the village/town/ Municipality/Municipal Corporation. As a result, the shops existing in the twin cities, which are getting their allotments of trees from different far off places, are virtually asked to be closed down. The further case of the petitioners is that having regard to the subsistence of the licences for more than five years, the respondents can not impose any such restrictions or stop the business as long as they subsist. It is their further case that no action has been taken for cancellation of their licences nor any show cause notice was given to them to explain, thus, denying the petitioners the legitimate opportunity of hearing. Further, there is also no justification for such stoppage of business of petitioners' shops suddenly, more so when they are entitled to run the business under the licences which have already been granted. Thus, principally it is contended that the impugned action on the part of the respondents in orally stopping their business is illegal. It is also further contended that the aforesaid G.O.No.767 can not have any retrospective in its operation in respect of the licences which have already been granted prior to its enforcement and it can be made applicable only in case of future licences. That apart, grant of licences in favour of the petitioners-societies to ameliorate the conditions of poor tappers being a socio welfare policy, there can not be sudden stoppage nor can be interdicted with, in such a fashion. At the fag end of the arguments, it was contended on behalf of the petitioners-societies that even though in these Writ Petitions, there is no challenge as to the validity of the present policy issued, however, in one case they did make one

such challenge. Hence, these Writ Petitions.

In the counter affidavits filed on behalf of the respondents herein, it was submitted that the petitioners-societies were allotted trees as per the Excise Policy for the year 2003-2004. It is contemplated now under the present policy for the year 2004-2005 that the trees will be allotted for the shops located in the local villages, mandals, districts, which are located within 50KMs distance from the location of the trees. However, having regard to the existence of the petitioners' toddy shops where such trees do not exist within the prescribed distance, no tree can be allotted to them under the Policy. It is also pointed out that having regard to the scheme of the Act, the policy and licence can only be made applicable for one year and not beyond. Though in the earlier policy for the year 2003-2004, instructions were issued for grant of renewal of the licences year after year, having found certain difficulties, the present policy has been enunciated only with a view to facilitate quick transport of toddy and consumption of the same within 4 to 5 hours by consumers, and thereby avoiding any dilution or adulteration in between. Further, it avoids pooling of quantities obtained from different topes and transporting long distances covering about 400 to 500 KMs thereby affecting the quality. The restriction now imposed would prevent adulteration of toddy with obnoxious substances like Chloral Hydrate, Diazepam, etc. and provide pure and wholesome toddy to the consumers. It is now known fact that there are no trees in and around Hyderabad city, which are capable of yielding toddy, and the same is being brought from far off distant places like Anantapur, Prakasam and Karimnagar, etc., and water is added for dilution and certain drugs were added to increase its intoxicating quality, which is highly dangerous to human system and therefore, the present move is only with a view to protect general public from dangerous effects of these drugs. It was pointed out that from 2002-2004, about 3095 cases were booked, 99 persons died due to drinking adulterated toddy,

2081 persons have been taken into custody and 312983 litres of toddy had to be destroyed, and 605 KGs of Diazepam and 104 vehicles were seized and 1043 licences had to be suspended. Hence, there are no merits in the contentions of the petitioner societies in regard to the claim for continuance of their business in pursuance of the licences which have already been granted. It is made clear that no action has been taken affecting licences with the petitioner societies. The change is only in regard to allotment of trees. Hence, there are no merits in the Writ Petitions and the same are liable to be dismissed.

Sri K.Ramakrishna Reddy and Sri D.Prakash Reddy, learned Senior Counsel appearing on behalf of the petitioners-societies, strenuously contend that having regard to the policy enunciated earlier under the provisions of Section 17 and Rule 3 of the A.P.Excise (Lease of Right to Sell Liquor in Retail) Rules, 1969, the petitioners, who are holding valid licences, are entitled to continue the business. However, the action of the respondents herein in stopping the business of petitioners-societies suddenly by oral orders, without any notice and without show-cause and especially without cancelling licences, is unsustainable, and further the present policy can not be given retrospective effect. It is argued that the petitioners are sufficiently protected under the socio-welfare policy measures and therefore, their rights to carry on the business as flown from the existing licences, can not be affected. Further, having regard to these licences for the respective periods and in some cases permanent, the respondents have no power or authority or jurisdiction to affect the same in any way. It is further contended by placing reliance on the decision of this Court in *The Guntakal Toddy Tappers Co-opeative Society, Gooty V., Govt. of A.P.* and *State of Andhra Pradesh & others V. Guntakal Toddy Tappers Co-operative Society & another* that in a similar circumstances where the period of existing licence holders was sought to be affected, the courts have held otherwise. Hence, the petitioners are entitled to the relief as sought

for.

The learned Advocate General appearing on behalf of the respondents herein by taking through various aspects especially the number of shops and the distance travelled, submitted that it is only keeping in view the public health and especially the long distance which the toddy has to pass through before reaching the twin cities giving raise to scope for not only dilution but also adulteration, the

present policy has been enunciated restricting the existence of shops within 50 KMs range from the trees so as to provide the consumers with fresh toddy, unadulterated and undiluted. Further, by placing reliance on *Government of Maharashtra & others V. Deokar's Distillery* and *Secretary to Govt., Tamil Nadu & another Vs. K.Vinayagamurthy* it is contended that since it is a policy decision of the Government, the same can not be interdicted by this Court in exercise of powers under Section 226 of the Constitution of India.

Considering the submissions made and on perusal of the material, the question which falls for consideration in all these Writ Petitions is as to whether the petitioners, who are admittedly holding licences, are in any way affected by the Excise Policy of the Government for the year 2004-2005 ?

Succinctly, it is now well established that a citizen has no fundamental right to trade or business in liquor as reiterated in *Kohday Distilleries Ltd. & others V. State of Karnataka and others*, which lays down as under:

> "The law on the subject relating to right to carry on trade or business in potable liquor can be summarized thus:
>
> a)The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in clauses (2) to (6) of Article 19. The

fundamental rights guaranteed in Article 19(1)(a) to (g) are, therefore, to be read along with the said qualifications. Even the rights guaranteed under the Constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by clauses (2) to (6) of Article 19 of our Constitution.

b) The right to practise any profession or to carry on any occupation, trade or business does not extend to practicing a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilized societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e. *res extra commercium,*(outside commerce). There can not be business in crime.

c)Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is *res extra commercium* being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence, the trade or business in liquor can be completely prohibited.

d) Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The State has, therefore, the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes.

e) For the same reason, the State can create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and distribution of the liquor as a beverage and also sell the licences to the citizens for the said purpose by charging fees. This can be done under Article 19(6) or even otherwise.

f)For the same reason, again, the State can impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles

which are *res commercium*. The restrictions and limitations on the trade or business in potable liquor can again be both under Article 19(6) or otherwise. The restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination of others and/or to preserving to itself the right to sell licences to do trade or business in the same, to others.

g)When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State can not make discrimination between the citizens who are qualified to carry on the trade or business.

h)The State can adopt any mode of selling the licences for trade or business with a view to maximize its revenue so long as the method adopted is not discriminatory.

i)The State can carry on trade or business in potable liquor notwithstanding that it is an intoxicating drink and Article 47 enjoins it to prohibit its consumption. When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor which is also an aspect of reasonable restriction in the interest of general public. The State can not on that account be said to be carrying on an illegitimate business. It carries on business in products which are not declared illegal by completely prohibiting their production but in products the manufacture, possession and supply of which is regulated in the interests of the health, morals and welfare of the people. It does so also in the interests of the general public under Article 19(6).

j)The mere fact that the State levies taxes or fees on the production, sale and income derived from potable liquor whether the production, sale or income is legitimate or illegitimate, does not make the State a party to the said activities. The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions. Hence, the mere fact that the State levies taxes and fees on trade or business in liquor or derives income from it, does not make the right to carry on trade or business in liquor a fundamental right, or even a legal right when such trade or business is completely prohibited.

k)The State can not prohibit trade or business in medicinal and toilet preparations containing liquor or alcohol. The State, can, however, under Article 19(6) place reasonable restrictions on the right to trade or business in the same in the interests of general public.

l)Likewise, the State can not prohibit trade or business in industrial alcohol which is not used as a beverage but used legitimately for industrial purposes. The State, however, can place reasonable restrictions on the said trade or business in the interests of the general public under Article 19(6) of the Constitution.

m)The restrictions placed on the trade or business in industrial alcohol or in medicinal and toilet preparations containing liquor or alcohol may also be for the purposes of preventing their abuse or diversion for use as or in beverage.

The contention that if a citizen has no fundamental right to carry on trade or business in potable liquor, the state is also injuncted from carrying on such trade, particularly in view of the provisions of Article 47 is fallacious."

The same principle is found place by no stress and reiteration in *Government of Maharashtra & others V. Deokar's Distillery* case *(3 supra)*.

There is no dispute to the basic fact that the petitioners are toddy co-operative societies for whom licences have been granted as per the Excise Policy for the year 2003-2004 for varying periods including up to the year 2007 and in some cases permanently. These societies are constituted by several members hailing from poor tappers' communities and the then Excise Policy as made out for the year 2003-2004 was to ameliorate the conditions of such persons. However, now under the present policy enunciated for the year 2004-2005, the respondents have come up with a restriction i.e. to the effect that the shops should exist within 50 KMs from the tree so that the consumers would get fresh and wholesome toddy, undiluted and unadulterated. There is no dispute to the fact that in regard to the shops existing in the twin cities, there are no toddy trees available in and around, and the toddy is being brought from far off districts like Anantapur, Prakasam and Karimnagar, etc. Thus, according to the respondents, the same will give scope for not only dilution but also

adulteration with several drugs which are very harmful to public health. It is pointed out that there have been several cases of detection of such adulteration which resulted in various deaths, and appropriate actions have been taken in respect of them.

Before considering the plea of petitioners for making any such claim especially where there is no serious challenge against the present policy on any valid legal ground other than those mentioned above, it necessitates to take note of the policies as existed and as now being enunciated. For the year 2003-2004, the respondents have issued Excise (Toddy) Policy Guidelines for the period from 01.10.2003 to 30.09.2004 vide G.O.Ms.No.998 Revenue (Excise-II) Department, dated 01.10.2003 (hereinafter referred to as 'the G.O.No.998') contemplating continuance of system of entrustment of shops of toddy tappers co-opeative societies and Tree for Tappers Scheme, through out the Andhra Pradesh, clause (7) thereof states "… All existing licences and new licences shall be permanent subject to payment of rentals. …". There is no dispute to the fact that under these Guidelines, the petitioners have been granted licences for the period more than one year, which include some licences extended up to the year 2007 and some on permanent basis without prescribing the outer period.

The Excise (Toddy) Policy Guidelines which have been issued for the year 2004-2005 which commence from 01.10.2004 to 30.09.2005, vide G.O.Ms.No.767 Revenue (Excise-II) Department, dated 29.09.2004 (hereinafter referred to as 'the G.O.No.767') contemplate in clause (1) that the toddy shops shall be established where trees are available within a distance of 50 KMs from the periphery of the Village / Town / Municipality/ Municipal Corporation. It is this restriction which is now being challenged by the petitioners as coming against them and on the basis of which the respondents have orally directed the petitioners' shops to be closed down without

any notice or without cancelling the existing licences. As can be seen from both the aforesaid G.Os., they are meant for a period of one year i.e. one for the year 2003-2004 and another for the year 2004-2005. There is no dispute to the fact that such policies are made out once in every year. In this connection, it is relevant to note Section 17(1) of the A.P. Excise Act, 1968, which reads as follows:

> "**Grant of exclusive privilege of manufacture, etc.:**
>
> (1) Subject to the provisions of Section 28 and any rules made in this behalf, the Government may, subject to such conditions as they may deem fit to impose, grant for a fixed period to any person at any place a lease or licence or both either jointly or severally for the exclusive privilege, -
>
> i. of manufacturing or of supplying by wholesale or of both; or
>
> ii. of selling by wholesale or by retail, or
>
> iii. of manufacturing or of supplying by wholesale, or of both, and of selling by retail, any liquor or other intoxicant within any such area in the State as may be specified in the said order."

Under the above substantive provision, which prescribes for grant of exclusive privileges for doing any business or manufacturing, etc. as contemplated thereunder and the same restricts that grant shall be for a fixed period.

In exercise of the powers conferred under Section 72 of the A.P.Excise Act, 1968, the Government has framed the subordinate legislation in the form of Rules covering various aspects. In this connection, it is relevant to note the Rule (3) of the A.P. Excise (Lease of Right to Sell Liquor in Retail) Rules, 1969.

"**Lease of right to sell liquor in retail :**

(1)Subject to the provisions of these rules and also subject to payment of issue price for the Minimum Guaranteed Quantity of arrack of the shop or group of shops as part of sum under Section 23 read with Section 17 of the Act for grant of lease of right to sell arrack in retail in the case of arrack shops, and tree tax and tree owner's rent for grant of lease of right to sell toddy in retail in the case of toddy shops; besides the rental every lease of right to sell liquor in retail shall be granted by public auction duly notified. The lease shall ordinarily be for the period of one excise year.

Provided that where the Commissioner considers it necessary to grant the lease of right to sell liquor in retail in any other manner he shall do so with the prior approval of the Government.

Provided further that the period of licence granted to Tappers Co-operative Society and to individual tappers under "Tree For Tapers Scheme" shall be for one year and the licence held by them shall also be renewed for one year at a time. …"

A bare reading of the aforesaid Rule, the first clause contemplates grant of lease of right to sell toddy in retail by public auction, and that the lease shall ordinarily be for a period of one excise year. According to the respondents, in exercise of powers conferred under the first proviso thereto, the Government enunciates the Excise Policy by way of guidelines every year. On reading of the said first proviso, it goes to show that on a considered decision of the Commissioner with the prior approval of the Government, such grant of lease can be in any other manner. A bare reading of the first proviso, the expression "in any other manner" could only mean the processional manner in which such lease has to be granted. Clause (1) thereof contemplates the said grant by public auction. The discretion is left with the Commissioner subject to approval of the Government, to change the same into either by allotment by selection or as it may deem fit in the exigencies. Therefore, it can not be said that the expression "in any other manner" as contemplated in the first clause would or can take any variation in regard to the period for which such lease is statutorily restricted i.e. for a period of one excise year.

Apt to note, the second proviso once again restricts that the period of licence granted to a Tappers Co-operative Society and to individual tappers under “Tree For Tapers Scheme” shall be for one year and the licence held by them shall also be renewed for one year at a time. This only supports the aforesaid observation that in exercise of powers under the first proviso, the Commissioner or the Government could not have touched the aspect of period as sought to be restricted not only in these Rules but also as contemplated in substantive provision under Section 17 of the Main Act. In the circumstances, it can not be said that any instructions or guidelines or the policy as sought to be made in exercise of powers under the first proviso, could in any way enlarge or touch in any manner the prescribed period of one year as contemplated under Law. Therefore, it follows that on a reading of these aforesaid provisions, the period of licence can not be beyond a period of one year though can be made subject to renewal for one year at a time. Extending the same, it can not be said that even any other policy could have extended the period beyond one year. Since any such policy or guidelines are being framed every year, there could not have been any such prescription of period beyond one year in any one year’s policy. Normal life of a policy or guidelines issued in a particular year would end with that year and can not be extended beyond the said period. Therefore, there could not have been any policy contemplating any scheme beyond one year nor there can be any such licence which can be granted beyond a period of one year unless and until the Statute is properly amended. Any such extended measures beyond period of one year, would be squarely fall within the mischief of the restrictions and *ultra vires* the statutory provisions. Irrespective of question whether such policy or guidelines have statutory force or not, such executive fiat in exercise of power conferred under the subordinate legislation can not travel beyond the limits found in the Statute. Necessarily it follows that both the policy and the licences necessarily have to subsist only for a period of one year. Further, having regard to the fact that every year a new policy is being contemplated, itself would amply goes to show that there can not be

extension of earlier policy in the subsequent year. It is always open for the authorities to take into consideration various aspects and come out with valid schemes.

In *The Guntakal Toddy Tappers Co-operative Society case* (1 supra), whereunder having regard to the subsequent policy, the action taken by the authorities withdrawing the licences was under challenge, considering the same, the Division Bench of this Court held that there is no valid material in support of such action taken by the licensing authority under Section 32 of the said Act, nor there exists any cause having nexus to the object contemplated by the Act, and declared the impugned action as illegal and quashed the same holding that the petitioner would be entitled to have the benefit of the licences for the rest of the period as if they were not withdrawn. The case was carried in appeal to the Appeal, which has been decided in *State of Andhra Pradesh V. Guntakal Toddy Tappers Co-operative Society case* (*2 supra*), upholding the decision of the Division Bench of this Court. The Apex Court held that the State Government should not have interfered with the existing licences of the tappers societies. It was also held by the Apex Court that no interest of any outsider as lessee is involved and therefore, the decision of this Court was given effect to.

Similar such question has come up for consideration again before Division Bench of this Court in *Y.Harnath Reddy & others V. Nellore Toddy Tappers Co-operative Society* case . Considering the very Rule 3 with its provisos 1 and 2 and also the aforesaid decision of the Apex Court in *2 supra*, it was held that withdrawal of licence under Section 32 even during the initial licence period as reasonable. Placing reliance on the decision of the Apex Court reported in *Amar Chandra Chakraborty V. The Collector of Excise, Govt. of Tripura, Agartala & others* wherein the Apex Court accepted as valid the withdrawal of licence within the licence period since such withdrawal

was held to be based on a reasonable policy decision of the Government. The action of the authorities having regard to the subsequent policy was upheld. Thereunder, after considering the decision in *State of A.P. V. Guntakal Toddy Tappers Co-operative Society* (2 supra), upholding subsequent policy as valid, similar such pleas were rejected. Similar was the view taken by another Division Bench of this Court in *Toddy Tappers Co-op. Society, Kamareddy V. Excise Superintendent, Nizamabad*, which was following the decision of the Apex Court in *Amarchandra Chakarborty* (7 supra) case, where this Court refused to interfere the action of withdrawal of licences for the unexpired period.

In view of the above principles laid down it is to be held that there could not have been any policy laying down the scheme for permanent period or any period beyond one excise year and further that licences granted are always subject to the policies laid.

A feeble attempt has been made on behalf of the petitioners that there being no action initiated against the petitioners herein nor any reasons communicated to them as to why they could not carry on the business, the respondents can not come up with any such reasons through their counter affidavit filed in this Court. Reliance is placed on the decision of the Apex Court in *Mohinder Singh Gill & another V. The Chief Election Commissioner, New Delhi & others* in support of their contention. There can not be any dispute in regard to the said proposition. However, the same can not be made applicable to the facts of the present case which is totally stand apart.

In view of the above, I do not find any merits in any of the submissions made on behalf of the petitioners herein. Hence, these Writ Petitions fail and the same are accordingly dismissed. No costs.

16.11.2004 ----------

(B.Prakash Rao,J.)

DRK

Copy to:

One Fair copy to the Hon'ble Mr.Justice B.Prakash Rao Garu (for his Lordships Kind perusal)

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2 The Proh. & Excise Superintendent Hyderabad District at Hyderabad.
3 The Commissioner of Proh. & Excise, Govt. of A.P. at Hyderabad.
4 The Secretary, Revenue (Excise-II) Department, Govt. of A.P., Secretariat, Hyderabad.

5 The Proh. & Excise Inspector, SHO, Secunderabad, Hyderabad

6 The Proh. & Excise Inspector, SHO, Golconda , Hyderabad

7 The Spl.Chief Secretary, Revenue(Excise-II) Department, Govt. of Andhra Pradesh, Secretariat, Hyderabad.

8 The Secretary, Prohibition & Excise Dept., Government of Andhra Pradesh, Secretariat, Hyderabad.

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